LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
http://www.in.gov/legislative

FISCAL IMPACT STATEMENT

LS 6864 | **NOTE PREPARED:** Jan 2, 2012
BILL NUMBER: HB 1202 | **BILL AMENDED:**

SUBJECT: Public Deposit Insurance Fund.

FIRST AUTHOR: Rep. Dermody | **BILL STATUS:** As Introduced
FIRST SPONSOR:

FUNDS AFFECTED: X GENERAL | **IMPACT:** State & Local
X DEDICATED
FEDERAL

Summary of Legislation: This bill has the following provisions:

The bill allows the Board for Depositories to merge with a domestic nonprofit corporation if certain conditions are met, including the approval of a resolution of merger and conversion by the board of directors and voting members of the domestic nonprofit corporation.

It requires the surviving nonprofit corporation of the merger, known as the Public Deposit Insurance Corporation (PDIC), to deliver to the Secretary of State (SOS) articles of merger that include certain information regarding the merger. The bill allows the SOS to approve or disapprove the articles of merger.

The bill establishes the effect of the merger, including that the:

(1) surviving nonprofit corporation does not have the statutory rights, privileges, immunities, and powers and is not subject to the statutory duties, restrictions, penalties, and liabilities of the Board unless specifically expressed otherwise in law; and
(2) title to real property and other property owned by each party to the merger is vested in the surviving nonprofit corporation, including the Public Deposit Insurance Fund (which, under the management of the PDIC, is called the Corporation Insurance Fund (CIF).)

The bill requires the merging nonprofit corporation to comply with the laws relating to mergers of nonprofits except for a provision that requires court approval or when the requirements are otherwise inconsistent with the provisions governing the merger with the Board.

It provides that all property in the corporation insurance fund and all property otherwise held by the PDIC is exempt from all taxes imposed by the state or any political subdivision.

The bill establishes certain immunity for members of the board of directors and any officers, members, or employees of the PDIC.

It provides for the expiration of provisions that: (1) create the Board; and (2) establish the duties, restrictions, penalties, and liabilities regarding the Board and the management of the Public Deposit Insurance Fund (PDIF).

The bill allows the SOS to file an affidavit with the Governor requesting that the Board continue administering the PDIF if the Board and a nonprofit corporation fail to merge by a certain date and requires the Governor, within 10 days, to issue an executive order that allows the Board to continue to administer the PDIF until a certain date.

It changes references from the "Board for Depositories" to the "Public Deposit Insurance Corporation," and it changes references from the "Public Deposit Insurance Fund" to the "Corporation Insurance Fund."

It makes other changes related to the expiration of the provisions regarding the Board.

Effective Date: Upon passage; July 1, 2012.

Explanation of State Expenditures:

Explanation of State Revenues: A merger of the Board with a domestic nonprofit corporation under the bill will have indeterminate fiscal impact on the assessment of public depositories. The bill authorizes the payment of assessments to the Corporation Insurance Fund, but does not specify the assessment criteria, nor does it apply the existing criteria for determination of assessment rates to the new entity. The creation of the a new entity will not affect two existing loans made to the state and a state agency. However, a merger may affect the future investments, depending on the policies adopted by the new entity. Further, the revenue and property of the CIF is not subject to state or local taxes. There is no fiscal impact as the result of this exemption because the property and interest or income of the PDIF and the Board is currently exempt from all taxes imposed by the state or any political subdivision. Any change under the bill will only result from the decisions of the Board, the SOS, and the votes of the board of directors and voting members of the domestic nonprofit corporation.

Background and Additional Information -

Merger: Under the bill, the Board will merge with a domestic nonprofit corporation. If the domestic nonprofit corporation's board of directors adopts a resolution, which then must be approved by the voting members of the corporation, a plan for merger will result. The plan for merger, which may include amendments of the corporation's articles of incorporation and bylaws, is to be delivered to the SOS. If the SOS approves the articles of merger, it is proof that all conditions of the merger have been satisfied and the effective date of the merger is the date specified in the plan.

The Board of Depositories: The Board is an independent body politic and corporate, constituting an instrumentality of the state and for a public purpose. The Board provides safekeeping and prompt payment of public funds that are not covered by the Federal Deposit Insurance Corporation. The members of the

Board include the Governor, the Treasurer of State (who is the Secretary-Investment Manager of the Board), the Auditor of State, the Chairperson of the Department of Financial Institutions, the Chief Examiner of the State Board of Accounts, and four appointed members from depository institutions. (Within certain parameters, the Governor appoints two members, and the President Pro Tempore and the Speaker of the House each appoint one member).

The Public Deposit Insurance Corporation: The PDIC will be the surviving entity of the Board and the domestic nonprofit corporation. It is to be governed by the articles of incorporation and bylaws of the domestic nonprofit corporation, which may have been amended in the merger plan submitted to the SOS for approval.

The Public Deposit Insurance Fund: Assets: The total assets of the PDIF were $300.5 M on June 30, 2011, a reduction in assets of about $3.8 M from June 30, 2010.

Assessments: The Board determines and fixes the fair and reasonable assessment rate based on the public funds currently on deposit, the liabilities of the PDIF, and the determination of the Board on the amount of reserve losses. The maximum assessment rate is 2%. The FY 2010 and FY 2011 financial statements of the PDIF do not include any revenue from assessments.

Revenue: The PDIF received revenue from investment income and securities lending income of $2.8 M in FY 2010 and $985,770 in FY 2011.

Investments: Under current law, the Board is authorized to invest, reinvest, and exchange investments in excess of the cash working balance. In addition to bonds, notes, certificates, and other securities of the federal government, the Board may invest in bonds, notes, certificates, and other valid obligations of Indiana political subdivisions, bonds and other obligations of the Indiana Finance Authority (IFA), guarantees of industrial development obligations or credit enhancement obligations (subject to certain limitations), other instruments issued by IFA or a county, city, or town concerning industrial development, and bonds and other obligations of the Indiana Housing and Community Development Authority.

The Corporation Insurance Fund: Under the bill, the CIF will be maintained by the assessment of the public fund depositories, the collection of claims, and by the receipt of all interest and other earnings. The amount of the assessment is not specified, and the existing statute concerning the assessment will not apply. Similarly, the investment policy of the CIF and PDIC is not specified or applied under the bill.

The CIF will continue to pay claims in the manner currently in state statute. Additionally, the CIF will continue to hold until maturity bonds issued by the Indiana Housing Finance Authority and a loan to the state General Fund. The bonds issued by the Indiana Housing Finance Authority in 1989 do not bear interest, and the investment was valued at $4,970,000 on June 30, 2011. The bonds mature on February 15, 2013. The interest-free loan to the state General Fund was issued in 2004, and the maturity date has been extended by both state statute and Board action to 2023. The value of the loan was $50 M on June 30, 2011.

Explanation of Local Expenditures:

Explanation of Local Revenues: The bill would end payments from the PDIF that transfer to the Pension Relief Fund.

Background: Under current law, the interest income less all expenses of the Board and of the Indiana Education Savings Authority that were not paid by other sources is transferred to the Pension Distribution Fund. The Auditor of State, from 2002 until 2022, distributes two equal installment payments from the Pension Distribution Fund to the Pension Relief Fund of the Public Employees' Retirement Fund. In FY 2010, the PDIF transferred $8.2 M, and in FY 2011, it transferred $2.4 M.

State Agencies Affected: Board for Depositories.

Local Agencies Affected: Pension Relief Fund.

Information Sources: *Indiana Board for Depositories, Financial Statements, Years Ended June 30, 2011, and 2010.*

Fiscal Analyst: Karen Firestone, 317-234-2106.